# INDEX



## CITATIONS

Cases:

Cases—Continued

Cases—Continued



Statutes, Regulations and Rules:

Statutes, Regulations and Rules—Continued

# In the Supreme Court of the United States

OCTOBER TERM, 1962

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No. 52

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RAYMOND R. BEST, ET AL., PETITIONERS

*v.*

HUMBOLDT PLACER MINING COMPANY AND DEL DE ROSIER

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*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## BRIEF FOR THE PETITIONERS

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### OPINIONS BELOW

The opinion of the district court (R. 17-21) is reported at 185 F.Supp. 290. The opinion of the court of appeals (R. 34-40) is reported at 293 F.2d 553.

### JURISDICTION

The judgment of the court of appeals was entered on August 18, 1961 (R. 41). On November 15, 1961, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to December 16, 1961 (R. 41). The petition for a writ of certiorari was filed on December 15, 1961, and granted on February 19,

1962 (R. 42). 368 U.S. 983. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## QUESTION PRESENTED

The United States brought an action to condemn any outstanding mining claims on certain public lands in order to obtain immediate possession of those lands for the purpose of building a dam. Respondents, among others, assert that they own unpatented mining claims in the land. After the condemnation action was filed, the United States, consistently with its amended complaint, instituted administrative proceedings before the Bureau of Land Management of the Department of the Interior seeking a determination as to the validity of those claims. Respondents thereupon sought an injunction to restrain the conduct of the administrative proceedings.

The question presented is whether the condemnation court acted within its discretion in refusing the injunction and in holding that it would refrain from passing on respondents' claims and valuing them pending a determination of their validity by the administrative tribunal.

## STATUTES, REGULATIONS AND RULE INVOLVED

### *Statutes*

Rev. Stat. 441, 5 U.S.C. 485, provides in pertinent part:

> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects and agencies:
>
> * * * * *

4. Bureau of Land Management.

* * * * *

13. Public lands, including mines.

Rev. Stat. 453, 43 U.S.C. 2, provides:

The Secretary of the Interior or such officer as he may designate shall perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government.

Rev. Stat. 2478, 43 U.S.C. 1201, provides:

The Secretary of the Interior, or such officer as he may designate, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title not otherwise specially provided for.

Rev. Stat. 2318, 30 U.S.C. 21, provides:

In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Rev. Stat. 2319, 30 U.S.C. 22, provides:

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which

they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Rev. Stat. 2322, 30 U.S.C. 26, provides:

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth * * *.

*Regulations Relating to Public Lands of the Department of the Interior*

Sections 185.1-185.3 of the General Mining Regulations of the Bureau of Land Management, 43 C.F.R. 185.1-185.3, provide:

§185.1 *Lands subject to location and purchase.* Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase, as are also lands in national

forests in the public-land States, lands entered or patented under the stock-raising homestead law (title to minerals only can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably, and lands within the railroad grants for which patents have not issued.

§185.2 *Definition of mineral under mining laws.* Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of coal, oil, gas, oil shale, sodium, phosphate, potash, and in Louisiana and New Mexico sulphur, belonging to the United States, can be acquired under the mineral leasing laws, and are not subject to location and purchase under the United States mining laws.

§185.3 *Manner of initiating rights under locations.* Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim, posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc.

Section 221.67 of the Appeals and Contests Regulations of the Bureau of Land Management, 43 C.F.R. (1962 Supp.) 221.67, provides:

§221.67 *Government contests.* The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

*The Federal Rules of Civil Procedure*

Rule 71A of the Federal Rules of Civil Procedure provides in pertinent part:

CONDEMNATION OF PROPERTY

(a) Applicability of Other Rules. The Rules of Civil Procedure for the United States District Courts govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

* * * * * *

(h) Trial. If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that,

because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

## STATEMENT

This case originated with the filing of a complaint by the respondents, Humboldt Placer Mining Company and Del De Rosier, for an injunction to restrain officers of the Department of the Interior from proceeding to obtain an administrative determination of the validity of respondents' mining claims in a contest proceeding instituted before a regional examiner of the Bureau of Land Management. The facts are not in dispute.

In June 1957, the United States brought a condemnation action in the United States District Court for the the Northern District of California for the purpose of obtaining immediate possession of and title to any outstanding mining interests in certain federally owned land which was needed for the construction of the Trin-

ity River Dam and Reservoir in California (R. 22).[1] The respondents claim that they own valid unpatented mining claims upon this land. By an amendment to the complaint, the United States reserved jurisdiction to have the validity of the mining claims determined in administrative proceedings before the Bureau of Land Management of the Department of the Interior (R. 22). The district court has issued to the United States a writ of possession, but all other issues in the condemnation action are still pending (R. 34, 20).

In May 1958, the United States, acting pursuant to Section 221.67 of the Regulations Relating to Public Lands of the Department of Interior, 43 C.F.R. 221.67 (*supra*, p. 6), instituted a contest proceeding in the local Land Office of the Bureau of Land Management at Sacramento, California, seeking an administrative determination of the validity of respondents' mining claims. The grounds of contest were that the land embraced within the claims is non-mineral in character and that minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery (R. 14, 17). An amended complaint was filed in the administrative proceedings in March 1960 (R. 10-16).[2] At that time there had been no hearing upon the validity of the claims in the district court. Respondents, who were required by Section 221.64 of the Public Lands Regulations, 43 C.F.R. 221.64, to answer the allegations of the complaint within 30 days or have the allegations taken as confessed (see R. 16), thereupon

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[1] *United States* v. *3,563.17 Acres* (N.D. Cal., No. 7570).

[2] The original complaint is not included in the record of the present litigation. No issue has been raised as to the propriety of the pleadings filed by the United States in the contest proceeding.

brought the present action to enjoin officials of the Department of Interior, who had acted on behalf of the United States in instituting the contest, from proceeding further with that administrative action (R. 3-10). The complaint alleged that the petitioners had acted in excess of their statutory authority in bringing the contest; that the administrative proceedings were in derogation of the district court's exclusive jurisdiction over "settlement and determination of all questions of title and of the right of the United States to the use and occupation of the said premises"; and that failure to enjoin the contest proceedings would subject the respondents to a multiplicity of suits (R. 7-9). The action for an injunction was heard by the same district judge who was sitting in the pending condemnation suit.

On a motion to dismiss the complaint for injunction, the district court granted summary judgment for the United States (R. 17-23). The court noted that the United States had reserved jurisdiction to determine the validity of respondents' claims in administrative proceedings and held that there was no evidence of harassment of the respondents, since the government's purpose in filing the condemnation action prior to instituting administrative proceedings was only to obtain immediate possession of the land. "No authority, or reason," it held, "will support the proposition that such suits constitute an irrevocable election of forum" (R. 18). The district court recognized that there were both precedent and substantial reasons for it to stay its hand on the issue of validity of mining claims in order to allow a "tribunal of more limited jurisdiction [to adjudicate] the issues peculiarly within

its competency" (R. 19). The court stated further (R. 19):

> Assuming that this Court has the power to enjoin further proceedings in the contests which are now at issue, there is no good reason for the exercise of such power. To the contrary, there is every reason to allow the issues of the contests to be resolved by the administrative agency, with its special experience and expertise in these matters.

The court concluded that it would hold the condemnation proceedings in abeyance until the validity of the mining claims had been decided in the contest proceedings.

The Court of Appeals for the Ninth Circuit reversed. It noted that the respondents had conceded that, in the absence of the condemnation action, the United States might have initiated a contest proceeding before the Bureau of Land Management for the purpose of obtaining a determination of the validity of unpatented mining claims on public land. "Such is undoubtedly the law," said the court, citing *Cameron* v. *United States*, 252 U.S. 450 (R. 35). It was the court's view, however, that in initiating the condemnation proceedings, the Secretary of Interior "elected to put into issue [before the district court] the validity of the mining claims" since respondents would be entitled to just compensation only if such claims were valid (R. 37). In so ruling, the court specifically rejected the district court's finding that the United States had resorted to condemnation solely for the purpose of obtaining immediate possession of the lands, and

refused to give effect to the government's reservation in the condemnation complaint of the right to have the validity of the mining claims determined before the Bureau of Land Management (R. 37, 39).

The court of appeals also found Rule 71A(h) of the Federal Rules of Civil Procedure to be a bar to determination of the validity of the mining claims by any other court or administrative agency because that rule, after providing for trial of the issue of just compensation by a jury or a commission of three persons appointed by the condemnation court, states that "Trial on all issues shall otherwise be by the court" (R. 40). In apparent reliance upon its reading of this Rule as a statutory bar to Bureau of Land Management proceedings instituted subsequent to a condemnation action, the court concluded (R. 40):

> * * * No statute or controlling authority has been called to our attention indicating that the administrative tribunal, within the Department of the Interior retains jurisdiction to adjudicate the validity of mining claims after the Secretary of the Interior has invoked the jurisdiction of the district court by the filing of a condemnation acton in which is raised the same issue.

The court of appeals distinguished *United States* v. *Minnilee Baker*, 60 I.D. 241 (1948), a decision of the Solicitor of the Department of Interior which is in direct conflict with its holding, on the ground that the only authority cited by the Solicitor is *Cameron* v. *United States*, 252 U.S. 450. The court was of the view that *Cameron* does not apply.

## SUMMARY OF ARGUMENT

A. In order to obtain (for construction of the Trinity River Dam and Reservoir) immediate possession of public lands free of any mining claims, the United States instituted a condemnation action in the federal district court. In its complaint (as amended), it reserved the right to have the validity of any such claims determined in administrative proceedings before the Bureau of Land Management of the Department of the Interior. Thereafter, the government instituted regular contest proceedings before the Bureau seeking a determination of the validity of respondents' claims. Respondents moved in the condemnation court to enjoin the contest proceedings. The court refused the injunction but was reversed by the court of appeals which held that the United States, in bringing the condemnation action, had elected, as a matter of law, to have the validity of the claims determined by the district court and that Rule 71A(h) of the Federal Rules of Civil Procedure barred the district court from exercising discretion "to allow the issues of the contests to be resolved by the administrative agency, with its special experience and expertise in these matters" (R. 19). The question presented is whether, where the government brings a condemnation action for purposes of obtaining immediate possession of public lands free of any mining claims thereon, the condemnation court has discretion to permit a determination of the validity of such claims in administrative proceedings subsequently instituted.

B. A mining claim is a possessory interest founded upon a showing, among other things, that "minerals

have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success, in developing a valuable mine" (*Castle* v. *Womble*, 19 L.D. 455, 457). Whether one has established a right or interest in public lands is a matter traditionally determined by the Department of the Interior, which has a statutory responsibility for the administration and disposition of the public lands, including mining claims thereon (5 U.S.C. 485; 30 U.S.C. 26; 43 U.S.C. 2, 1201).

Repeatedly since 1849, when the Department of the Interior succeeded to the functions of the General Land Office, this Court has recognized the breadth and exclusivity of the Department's statutory authority over the disposition of the public lands and claims related to those lands. *E.g.*, *Brown* v. *Hitchcock*, 173 U.S. 473; *Cameron* v. *United States*, 252 U.S. 450; *Northern Pacific Ry. Co.* v. *McComas*, 250 U.S. 387, 392. Thus, the Court stated in *Cameron* (p. 462) that "It may be laid down as a general rule that, in the absence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior."

C. In this case it is necessary only to decide whether the district court had discretion to allow the validity of claims on the lands condemned to be resolved in proceedings before the administrative agency. The efficient management of public lands and sound judicial practice dictate an affirmative answer. Here, as

in *United States* v. *Western Pacific R. Co.*, 352 U.S. 59, 64, "* * * the reasons for the existence of the doctrine [of primary jurisdiction] are present and * * * the purposes it serves will be aided by its application in the particular litigation." See *Far East Conference* v. *United States*, 342 U.S. 570, 574-575.

Determinations as to the validity of mining claims require the exercise of highly specilized judgment concerning testimony and exhibits in the fields of geology, mineralogy, mining engineering, cadastral engineering, geophysics and geochemistry, as well as an understanding of the relationship of the statutory requirements for validity to the structure and purpose of the mining laws and the extensive regulations promulgated by the Department of the Interior. Moreover, the vast number and complexity of the validity proceedings which arise in connection with condemnation and are presently adjudicated before the Bureau of Land Management would, under the court of appeals' decision, seriously increase the already overcrowded dockets of the federal courts.

D. Neither the statutes invoked by the United States in bringing the condemnation action nor the decisions interpreting those statutes support the court of appeals' holding. The United States brought the condemnation action as the only orderly judicial means of obtaining immediate possession of land needed for the Trinity Dam. That an election of forums was not the government's intention is clear from its reservation in the condemnation complaint of the right to have the validity of any mining claims determined by the Department of the Interior (R. 22). Thus, the court of appeals could not have found an election as a matter of choice

but only by operation of law. However, the view that there was an implied election finds no support in the statute which gives the district courts jurisdiction over condemnation actions. Indeed, in *United States* v. *Eisenbeis*, 112 Fed. 190, 195, the Ninth Circuit itself stated:

> [I]t does not necessarily follow, by the commencement of [condemnation] proceedings in the national court, that the title to the land, if in dispute, must be tried therein, and cannot be tried, heard, and determined in any other court. * * *

The instant holding creates just such a "Hobson's choice" as was condemned in *United States* v. *93,970 Acres*, 360 U.S. 328. Where the government requires immediate possession of public lands on which there may be adverse private claims, it can obtain such possession only through court proceedings which, according to the court of appeals, would terminate the primary jurisdiction of the Department of the Interior over such claims. There is no reason why the government should not be allowed to invoke judicial procedures to obtain possession of public lands needed for public purposes without losing its right to obtain from the Department of the Interior an expert administrative determination of the validity of mining claims.

Rule 71A(h) of the Federal Rules of Civil Procedure, which the court of appeals found to be a bar to the administrative proceedings, was enacted to deal with other problems and affords no support for the court's holding. The view that this rule requires all issues in a condemnation action to be heard and decided by the

condemnation court finds no support in the history of the rule or in the policies which led to its adoption. The twofold purpose of the rule is (1) to specify the conditions on which trial of the issue of just compensation is to be to the court, to a jury, or to a commission and (2) to allocate between the court, on the one hand, and the jury or Commission, on the other, the determination of relevant issues. It is to this latter objective that the last sentence of this subsection ("Trial of all issues shall otherwise be by the court.") is addressed.

## ARGUMENT

### The District Court Acted within Its Discretion in Refusing to Enjoin the Administrative Proceedings

#### *A. Introduction*

The proposed construction of the Trinity River Dam and Reservoir required immediate possession of 3563.17 acres of public lands on which a large, but indefinite, number of valid and invalid unpatented mining claims were outstanding.[3] To obtain such possession, the United States brought a condemnation action in the federal district court. To date, the Sacramento Office of the Bureau of Land Management has reviewed some 6200 unpatented mining claims related to the public lands within the project area. Some of these claims were declared invalid as having been located on public lands not then open to entry under the mining laws (*e.g., Alumina Development Corp. of Utah*, 67 I.D. 68 (1960)); and others were found to be on lands not required for the project. However, as to all

[3] The entire Trinity River Dam and Reservoir project will require 10,000 acres of land. S. Doc. 113, 81st Cong., 1st Sess., p. 120.

remaining claims, contest proceedings were instituted before the Bureau of Land Management, including the contest action to test the claims of respondents. A number of these contests have been concluded, some by default of the claimants and others after full adversary proceedings. Still others are now being held in abeyance by the Department of the Interior pending the outcome of this case.[4] Further dispositions are precluded by the ruling of the court of appeals, which holds that the administrative avenue was shut off by the filing of the condemnation complaint.

If the court's view is correct, the United States, when it wishes to obtain the expert judgment of the Bureau of Land Management, the agency in which the Congress, for more than a century and a half, has lodged full authority for the administration and disposition of the public lands, must forego immediate possession until it is in a position to prosecute contest proceedings before that body. In turn, this will mean substantial delays in the completion of the power, military or other public projects for which public lands are required. Thus, at a minimum, possession will be denied until the United States can complete an investigation of all local land records in the area involved, determine what claims exist and bring the necessary contest proceedings. If the court's decision means that initiation of condemnation terminates the

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[4] Administrative proceedings for determination of the validity of claims on public lands involved in other condemnation actions have also been stayed pending determination of this case. See, *e.g.*, *United States* v. *324.271.94 Acres*, No. 769-60Y (S.D. Calif.) (temporary restraining order granted November 14, 1961).

Department's authority to conclude pending validity proceedings, the delays necessary to complete those proceedings prior to condemnation would, as a practical matter, ordinarily preclude resort to the administrative process.

In either event, the court of appeals decision would force the United States to bypass the Administrative process. Not only would the expert judgment of this experienced administrative agency be lost, but a flood of lengthy and complicated validity proceedings—some 2050 in this Trinity Dam project alone—would be loosed upon the district courts.

We shall urge below (*infra*, pp. 18-41) that the district court properly refused to enjoin the Bureau of Land Management contest proceedings; that Congress has given the Department of Interior the authority to administer and dispose of the public lands, including any mining claims on such lands; and that there is no reason—whether of policy, logic or authority—for denying the district court the discretion to allow this agency to make that determination in this case.

B. *Congress has given to the Department of the Interior primary authority for administration and disposition of the public lands, including mining claims on such lands.*

1. *The nature of a mining claim.* A mining claim is a property right in the public lands bestowed by Congress upon any individual who discovers valuable minerals thereon. It is a possessory interest in the land which entitles the claimant to remove and use the minerals found and to be compensated for their value if taken by the government. *North American*

*Transportation & Trading Co. v. United States*, 53 C. Cls. 424, affirmed, 253 U.S. 330. Respondents allege that they have made such valuable mineral discoveries on the public lands condemned for the Trinity River Dam and Reservoir.

Specifically, the mining laws of the United States, 30 U.S.C. 21 *et seq.*, and the implementing Public Land Regulations, 43 C.F.R. Part 185, have provided for nearly a century that private individuals may obtain the right to possession of public lands and the minerals throughout their entire depth (1) by discovering a valuable mineral deposit and (2) by complying with the local procedural requirements for making a "location." To meet the first condition the claimant must be able to show that "'* * *' minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine' " (30 U.S.C. 21, 22, *supra*, pp. 3-4; *Chrisman* v. *Miller*, 197 U.S. 313, 322, quoting and affirming the rule laid down by the Land Department in *Castle* v. *Womble*, 19 L.D. 455, 457). Section 185.3 of the Public Lands Regulations, 43 C.F.R. 185.3 (*supra*, p. 5), sets out the "location" requirements:

> Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim, posting notice of location thereon and complying with the State laws, re-

garding the recording of the location in the county recorder's office, discovery work, etc.[5]

In order to hold this possessory title, the claimant must devote at least $100 worth of labor or improvements to the claim each year (30 U.S.C. 28; 43 C.F.R. 185.16, 185.29).

In order to defend or enforce this possessory right against the government or to obtain compensation for its value upon a taking by the government, the claimant must prove a valid claim—the existence of sufficient valuable minerals and a proper location in accordance with state law. As against the government, no rights arise at all from the mining claim if, for any reason, there has been no valuable mineral discovery. *Cameron* v. *United States*, 252 U.S. 450, 460-461.[6]

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[5] Mining claims on public lands are recorded locally in accordance with state laws, and not with the Department of the Interior. 30 U.S.C. 28. A mining claim may be located, recorded and worked by the claimant without the federal government's being aware of its existence since notice to the federal government is not required to perfect such a possessory interest in public land. Frequently claims of doubtful validity or of marginal value are located and recorded only to remain dormant forever unless the federal government or some interested private party has reason to challenge the validity of the dormant claim. In recent years Congress has enacted statutes to aid the Department of the Interior in clearing the public domain of the cloud of such claims. See, *e.g.*, Section 7(a) of the Multiple Mineral Development Act, 68 Stat. 708, 711-712.

[6] The existence of a valid mineral discovery and the devotion of the $100 annual assessment in working the claim will give the claimant the exclusive right of possession and enjoyment of the land, but not legal title. The claimant may, at any time, secure a fee patent (legal title) to the land by making appropriate application to the Department of the Interior and presenting proper proofs of discovery of valuable minerals and investment of labor or funds in working the claim (30 U.S.C. 29).

The Department of the Interior has issued regulations (43 C.F.R. Part 221) which provide a procedure by which the government may challenge the validity of any such claim by initiating a "contest" proceeding (43 C.F.R. 221.67, *supra*, p. 6). These regulations are authorized by statute, and codify what has long been the practice as to mining claims. 5 U.S.C. 485; 30 U.S.C. 22; 43 U.S.C. 1201; see *Cameron* v. *United States*, *supra*. Contest proceedings are conducted in accordance with the Administrative Procedure Act (*United States* v. *O'Leary*, 63 I.D. 341) and claimants are entitled to judicial review if the ultimate administrative decision is adverse. See, *e.g.*, *Foster* v. *Seaton*, 271 F. 2d 836 (C.A. D.C.).[7]

2. *The authority of the Department of the Interior over mining claims.* The Department of the Interior was created in 1849, Act of March 3, 1849, 9 Stat. 395, for the purpose, among others, of performing "all the duties in relation to the General Land Office, of supervision and appeal, now discharged by the Secretary of the Treasury * * *." The General Land Office in turn had been created by Congress in 1812 and charged with the duty to (2 Stat. 716)

> superintend, execute and perform, all such acts and things, touching or respecting the public lands of the United States, and other lands patented or granted by the United States, as have heretofore been directed by law to be done or performed in the

[7] The validity of a claim may also be determined in a proceeding instituted by a third party claiming adversely to the claimant, 43 C.F.R. (1962 Supp.) 221.51, and in a proceeding initiated by the claimant himself in order to obtain a patent for the land claimed, 30 U.S.C. 29.

> office of the Secretary of State, of the Secretary and Register of the Treasury, and of the Secretary of War, or which shall hereafter by law be assigned to the said office.

In carrying out this mandate, the Land Office had consistently exercised the power to determine the validity of rights claimed by private parties in the public lands. See *Harkness & Wife* v. *Underhill*, 1 Black 316, which records an instance in 1838 where the General Land Office determined as between two private claimants which was entitled to public land.

Since succeeding to these responsibilities in 1849, the Secretary of Interior has continuously been vested by Congress with plenary authority over the administration and disposition of the public lands. In the broadest terms, Rev. Stat. 441, as amended, 5 U.S.C. 485, has given the Secretary and his Department authority over the public business relating to public lands, including mining. The Secretary, from the beginning, has been made responsible for performance of all executive duties relating to the sale of public lands, to private claims in such lands, and to the issuance of patents for all grants of land. Rev. Stat. 453, 43 U.S.C. 2. Congress has also specifically authorized the Secretary to make appropriate regulations to carry into execution the statutory provisions relating to the public lands. Rev. Stat. 2478, as amended, 43 U.S.C. 1201. Regulations had been issued by the Department of the Interior to carry out public land laws even before enactment of this extensive and exclusive delegation of authority. When Congress first enacted the present law making min-

eral lands of the United States open to all citizens of the United States. Act of July 26, 1866, 14 Stat. 251, the Department of the Interior issued a set of "instructions" thereunder to govern the registers and receivers in the local land offices in their administration of the Act. Zabriskie, *Land Laws of the United States* (H. H. Bancroft and Company, 1870), p. 200. These instructions, which spell out the requirements to be met by a valid mining claim and the means of testing validity in administrative proceedings before the appropriate agencies of the Department of the Interior, are now found in the Code of Federal Regulations, 43 C.F.R. Parts 185, 221.

Repeatedly, since 1849, the Court has recognized the breadth and exclusivity of the Secretary's statutory authority over disposition of the public lands and claims relating to those lands. *Bishop of Nesqually* v. *Gibbon*, 158 U.S. 155, 166-167; *Brown* v. *Hitchcock*, 173 U.S. 473; *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 190 U.S. 301; *Riverside Oil Co.* v. *Hitchcock*, 190 U.S. 316; *Cameron* v. *United States*, 252 U.S. 450, 459-461; *Gaines* v. *Thompson*, 7 Wall. 347, 353-354; *Litchfield* v. *Register and Receiver*, 9 Wall. 575; and *Shepley* v. *Cowan*, 91 U.S. 330. In *Cameron* v. *United States*, *supra*, Cameron had claimed a valid mineral discovery on public lands. The claim was rejected after full proceedings before the Land Office, and when Cameron would not vacate the land (a part of Grand Canyon National Monument) the United States sued in the federal court to enjoin his occupation. This Court held the Secretary's ruling conclusive, quoting from *Catholic Bishop of Nesqually* v. *Gibbon*, *supra*, at 166, 167: "It may be laid down as a general rule that, in the ab-

sence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior" (*Cameron* v. *United States*, *supra*, at 462). The Court gave this detailed explanation of the Secretary's authority to determine the validity of mining claims (*id.* at 459-461; emphasis added):

> By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. Rev. Stats., §§ 441, 453, 2478 * * * [citations omitted].
>
> A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated. * * *
>
> Of course the land department has no power to strike down any claim arbitrarily, *but so long as the legal title remains in the Government it does*

> *have power, after proper notice and upon adequate hearing, to determine whether the claim is valid, and, if it be found invalid, to declare it null and void.* This is well illustrated in Orchard v. Alexander, 157 U.S. 372, 383, * * *. Due process in such case implies notice and a hearing. But this does not require that the hearing must be in the courts or forbid an inquiry and determination in the Land Department. * * * *In other words, the power of the department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed.*

The Court has thus held that the Department of the Interior has exclusive jurisdiction to determine rights in the public lands so long as no patent has been issued and legal title remains in the United States. See, also, *Northern Pacific Ry. Co.* v. *McComas*, 250 U.S. 387, 392; *Brown* v. *Hitchcock*, 173 U.S. 473, 477. According to these cases, the courts are not to touch the issue of title as between the United States and a private claimant or beween private claimants until proceedings before the Department of the Interior have been brought and finally determined. In *Brown* v. *Hitchcock*, *supra*, a private claimant sued in the federal court for cancellation of an order of the Secretary of the Interior which declared certain lands claimed by the plaintiff from the State of Oregon to be part of the public domain. The Court sustained a demurrer to the complaint and held that, as no patent had been issued, legal title had not passed and that "so long as the legal title remains in the Government all questions of right should be solved by ap-

peal to the land department and not to the courts" (*id.* at 477).

The Court had taken the same position in holding that the courts are without jurisdiction to enjoin or mandamus an officer of the Land Department in order to control his exercise of judgment and discretion in determining the validity of claim to public lands (*Riverside Oil Co.* v. *Hitchcock, supra,* at 324):

> Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions, to which is confided the execution of the laws which regulate the purchase, selling and care and disposition of the public lands.

Where a patent has been issued, the Court has held that it is to be given conclusive effect by the courts in a subsequent title dispute (*Steel* v. *Smelting Co.*, 106 U.S. 447, 451):

> In *Johnson* v. *Towsley*, the effect of the action of that department was the subject of special consideration. And the court applied the general doctrine, "that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others," and said, speaking by Mr. Justice Miller, "that the action of the land-office in issuing a patent for any of the public land, subject to sale

by pre-emption or otherwise, is conclusive of the legal title, must be admitted under the principle above stated, and in all courts, and in all forms of judicial proceedings, where this title must control, either by reason of the limited powers of the court, or the essential character of the proceeding, no inquiry can be permitted into the circumstances under which it was obtained." 13 Wall. 72, 83.

The statutes, regulations issued pursuant thereto, and the judicial precedents announced by this Court over more than a century leave no doubt, then, that the only tribunal which was open to respondents to establish their rights against the United States was the Department of the Interior.[8] The cases establish the further proposition that until legal title has passed —with the issuance of a patent—the validity of any claim is to be determined by the Department of the Interior in exercise of its primary jurisdiction. In holding that, although no patents for the lands had been issued, the filing of the condemnation action transferred exclusive primary jurisdiction to the district court to determine the validity of the claims, we

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[8] There are cases where in a suit to quiet title by the United States or to eject trespassers from public lands, the courts have, as part of the general issue, determined whether there has been a valid mineral discovery. *Kennedy* v. *United States*, 119 F. 2d 564 (C.A. 9); *United States* v. *Mobley*, 45 F. Supp. 407 (S.D. Cal.); *United States* v. *Schultz*, 31 F. 2d 764 (N.D. Cal.). We have found no case where such a determination has been made by a court at the request of a claimant and over the objection of the United States.

believe the court of appeals was disregarding the statutes and the historic teaching of this Court's long-settled decisions.

*3. Reasons of sound judicial and land management administration dictate the conclusion that the condemnation court has discretion to permit the validity of mining claims to be determined in administrative proceedings before the Bureau of Land Management.*

There is no need, in this case, to decide whether the district court would have been compelled, on the ground that the matter is one within the exclusive primary jurisdiction of the Department of the Interior, to stay its hand. The only question presented is whether the district court had discretion "to allow the issues of the contests to be resolved by the administrative agency, with its special experience and expertise in these matters" (R. 19). At the least, we believe, the district court was correct in holding that "where a court has jurisdiction of an entire controversy, it may wait until a court or tribunal of more limited jurisdiction adjudicates the issues peculiarly within its competence, and then give binding effect to the decision of such court or tribunal" (R. 19).

It is, of course, settled practice for the federal courts to stay the exercise of their jurisdiction in appropriate circumstances, to enable either a state court[9] or

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[9] See *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496; *Burford* v. *Sun Oil Co.*, 319 U.S. 315; *Louisiana Power & Light Co.* v. *City of Thibodaux*, 360 U.S. 25; *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957).

an administrative tribunal [10] to adjudicate issues peculiarly within its competence. This Court has pointed out that (*Far East Conference* v. *United States*, 342 U.S. 570, 574-575):

> * * * in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.

Here, as in *United States* v. *Western Pacific R. Co.*, 352 U.S. 59, 64, "* * * the reasons for the existence of the doctrine [of primary jurisdiction] are present and * * * the purposes it serves will be aided by its application in the present litigation." [11]

[10] See, *e.g.*, *Texas & Pacific Ry.* v. *American Tie Co.*, 234 U.S. 138; *United States* v. *Western Pacific R. Co.*, 352 U.S. 59; *Pennsylvania Ry. Co.* v. *United States*, 363 U.S. 202; *Civil Aeronautics Board* v. *Modern Air Transport, Inc.*, 179 F. 2d 622, 625 (C.A. 2); *United States* v. *Railway Express Agency, Inc.*, 89 F. Supp. 981 (D. Del.). See also Jaffe, *Primary Jurisdiction Reconsidered*, 102 U. Pa. L. Rev. 577, 584-592.

[11] It has been a common practice for the federal courts in condemnation proceedings to recognize the validity of contempora-

The Department of the Interior is the expert agency established by Congress for adjudication of mining claims on the public lands. The intricacy of the factual determinations on which validity depends calls for the expertise which the agency possesses and which the courts would be hard put to duplicate. The number and complexity of the validity proceedings which arise in connection with condemnation and are heard by the examiners in the Bureau of Land Management would seriously increase the already overcrowded dockets of the federal courts. In the circumstances, deference to the agency's authority to determine the validity of mining claims will not only promote the interest of sound and orderly judicial administration, but will also serve the purposes for which Congress created the agency and invested it with authority over such claims —the encouragement of prospecting for minerals, conservation of resources and maintenance of the integrity of the public lands—by promoting a uniform and expert administration of the statutes and regulations.

This administrative process for determination of the validity of private mining claims has been in operation for almost a century. A present staff of nine hearing examiners,[12] all of whom are available for assignment

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neous or subsequent litigation in the state courts on questions of state law such as tax matters, local property law involving creditors' rights, equitable title and interpretation of lease provisions. *United States* v. *Adamant Co.*, 197 F. 2d 1, 12 (C.A. 9); *United States* v. *25,936 Acres, Bergen County, N.J.*, 153 F. 2d 277 (C.A. 3); *Florida Beaches* v. *Niagara Inv. Co.*, 148 F. 2d 963 (C.A. 5); *United States* v. *150.29 Acres in Milwaukee, Wisc.*, 135 F. 2d 878 (C.A. 7); *United States* v. *Eisenbeis*, 112 Fed. 190 (C.A. 9); *United States* v. *70.39 Acres of Land*, 464 F. Supp. 451, 481 (S.D. Cal.).

[12] Hearing examiners are appointed in accordance with the requirements of Section 11 of the Administrative Procedure Act

to mining claim cases, handles a large volume of this litigation. Seventy-five to eighty per cent of the total hearings held by these examiners involve the adjudication of mining claims. In the fiscal year 1960-1961, 322 mining law cases (involving 1,162 separate claims) were brought before the hearing examiners. Of these, 81 cases (343 claims) were closed on procedural grounds without a hearing; in 241 cases (involving 819 claims), hearings on the merits were held and decisions rendered by the hearing examiner; in 90 of these cases, appeals were taken to the Director of the Bureau of Land Management. Many other mining claims are disposed of without the necessity of proceedings before a hearing examiner. The Bureau of Land Management's statistical report for the fiscal year 1961 indicates that there were a total of 27,228 mining claim adjudication cases closed during the year. These included 7,457 title transfer cases (*e.g.*, patent applications and land disposition conflicts), and approximately 20,000 mining claim investigations by the Bureau's mining engineers for the purpose of determining validity or invalidity.[13]

In order to determine the validity of mining claims,

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(5 U.S.C. 1010) and the Civil Service Commission Regulations issued pursuant thereto (5 C.F.R. Part 341). All are attorneys and have qualifying experience of from 12 to 34 years. Only two have less than 20 years experience in handling public lands matters.

Prior to the decision in *United States* v. *O'Leary*, 63 I.D. 341, the validity of mining claims was determined in proceedings conducted before the managers of the local land offices who heard the evidence and rendered initial decisions.

[13] The statistics have been obtained from the Statistical Appendix, Annual Report of the Director, Bureau of Land Management for Fiscal Year, 1961, Part 4, pp. 93-122.

numerous factual questions involving highly technical evidentiary presentations must ordinarily be resolved. It is the type of determination which, as the district court found (R. 19), requires the experience and expertise afforded by the Bureau of Land Management investigation and hearing process. The examiner must determine whether the claimant has made a proper "location" in accordance with local mining laws (43 C.F.R. 185.3 *et seq.*); whether the claimant's rights have been maintained by compliance with the work requirements of the statutes (30 U.S.C. 28, 29); and whether there has been satisfaction of the statutory requirements for discovery of a "valuable" mineral deposit of "such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success" (*Castle* v. *Womble*, 19 L.D. 455, 457; *Chrisman* v. *Miller*, 197 U.S. 313, 322). The application of these requirements to a particular mining claim requires the exercise of highly specialized judgment concerning testimony and exhibits in the fields of geology, mineralogy, mining engineering, cadastral engineering, geophysics and geochemistry, as well as an understanding of the relationship of the requirements to the structure and purpose of the mining laws and the extensive regulations promulgated by the Department of the Interior. See, *e.g.*, *Foster* v. *Seaton*, 271 F. 2d 836, 838 (C.A. D.C.). Conflicting expert testimony must be resolved. Survey and public land status records must be considered and areas of conflict determined. As illustrative of the many and complex issues that may arise in

connection with such adjudications, see *Cole* v. *Ralph*, 252 U.S. 286; *United States* v. *Altman*, 68 I.D. 235; *United States* v. *Carlile*, 67 I.D. 417; *Gabbs Exploration Co.*, 67 I.D. 160.[14]

Administrative proceedings for determination of the validity of claims are conducted in accordance with long established, detailed regulations authorized by statute and published in the Code of Federal Regulations (43 C.F.R. Part 221). Claimants, who are guaranteed due process (*Cameron* v. *United States*, 252 U.S. 450, 461), are afforded all the protections elaborated in the Administrative Procedure Act (*United States* v.

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[14] Typical factual questions concern the general geology of the area, and that of the claims in question; the relationship of the geological findings to the history of previous attempts to mine the minerals claimed in the same or similar areas; the technical possibilities of successfully extracting minerals from the claims under feasible mining engineering and milling methods; the required plant and equipment, effect of climate, availability and skill of labor, access to transportation, and other such factors; evaluation of mining and geologic maps, drilling records and techniques, geophysical and geochemical prospecting histories and records, assay samples of various workings, and the sampling theories and techniques used; economic evaluations of present and future worth, including estimates of recoverable values in the light of the quantity and quality of minerals which can be feasibly mined, the costs of production, and availability of markets. In addition, customs of miners become relevant to the determination of such questions as which of competing claimants made a prior claim and what is the physical extent of a claim (*e.g.*, how far a claimant is entitled to follow a particular vein).

Details of the technical factors involved in these determinations are summarized and explained in *Field Handbook for Mineral Examiners*, Bureau of Land Management, U. S. Department of the Interior, January, 1961. Details of the adjudication of mining claims and the validity determination process within the Department of the Interior are set forth in the *Manual of the Bureau of Land Management*, Volume VI, Parts 3-5.

*O'Leary*, 63 I.D. 341),[15] and may appeal from the examiner's decision to the Director of the Bureau of Land Management (43 C.F.R. (1962 Supp.) 221.1-221.20) and from the Director to the Secretary of the Interior (43 C.F.R. (1962 Supp.) 221.31-221.37). If the Secretary's decision is adverse, the claimant is entitled to judicial review (*e.g.*, *Foster* v. *Seaton*, *supra*).

Under the decision of the court of appeals, a vast number of validity cases now determined administratively would have to be heard and determined by the district courts. Thus, the validity of any unpatented claim on lands condemned by the United States would have to be determined by the condemnation court before just compensation could be awarded and the case closed. This would include both claims which are presently heard by the examiners as well as those which are disposed of by the Bureau of Land Management without the necessity of proceedings before the examiners. The

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[15] The opinion of the court of appeals notes in successive sentences that (1) the Solicitor of the Department of the Interior may exercise all of the authority of the Secretary on appeals from the Bureau of Land Management regarding public lands decisions and (2) the Solicitor is the official who directed the filing of the condemnation action in which it is "alleged" that the mining claims were invalid (R. 38). Although the court of appeals draws no express conclusion, the inference is that the Solicitor is acting both as prosecutor and judge in these matters. No such inference is warranted. The condemnation proceeding is brought on behalf of the Bureau of Reclamation, and the adjudication of the mining claims will be before hearing examiners of the Bureau of Land Management. These are independent bureaus of the Department of the Interior. The prosecuting and adjudicative functions are handled entirely separately and by different people. The functions ultimately merge at the top echelon of the Department, *viz.*, in the Solicitor and Secretary, but this is true generality of administrative adjudications by the Department of the Interior or any other executive department.

1960-1961 fiscal year statistics (*supra*, p. 31) give an indication of the massive volume of litigation involved. Thus, in the Southern District of California alone, over 2,200 unpatented mining claims are involved in pending condemnation litigation (see report of the United States Attorney for the Southern District of California, attached hereto as an appendix). In the Northern District of California, the Sacramento Regional Office of the Department of the Interior has processed some 6,200 unpatented mining claims on the single project that gives rise to the present litigation. Over 2,000 of these were included in the condemnation proceedings. The significance of this burden can be appreciated by comparing the 1,682 cases of all types which were pending in the Northern District at the close of the third quarter of 1961 [16] with these 2000 unpatented claims, each of which would present a separate case to be determined by the court on the basis of its own particular facts.

In those circumstances, the district court was more than justified in concluding (R. 19) that "there is every reason to allow the issues of the contests to be resolved by the administrative agency, with its special experience and expertise in these matters." As the court pointed out (R. 17), the government was challenging the validity of the mining claims on the grounds that the land involved is non-mineral in character and that minerals have not been found in sufficient quantities to constitute a valid discovery (see R. 11). These are issues coming within the "special competency

[16] Table C-1, Quarterly Report of the Director of the Administrative Office of the United States Courts.

and administrative experience" of the "Bureau of Land Management * * * in the hearing of contests of claims relating to the public lands" (R. 19). Particularly in view of the rule that courts ordinarily are precluded from enjoining the conduct of administrative proceedings (see, *e.g.*, *Macauley* v. *Waterman Steamship Corp.*, 327 U.S. 540), the court of appeals erred in overturning the district court's decision to permit the administrative proceedings before the expert agency to go forward.

C. *Nothing in the statutory provisions invoked by the United States in bringing the condemnation action denies the condemnation court discretion to allow determination of the validity of mining claims in procedings before the Department of the Interior.*

The United States brought the condemnation action as the only orderly judicial means of obtaining immediate possession of the land needed for the Trinity Dam and for determining, in due course, the amount of just compensation due to owners of valid mining claims on the land. The court of appeals specifically recognized that neither the filing of the condemnation action nor the order for immediate possession constitutes an admission by the United States as to the validity of the mining claims. However, the court found in the filing an election by the United States to have the validity of any such claims determined by the condemnation court. In addition, it held that Rule 71A(h) of the Federal Rules of Civil Procedure barred determination of that issue by another court or by an administrative agency. We submit that both rulings were in error.

That the government intended no election is clear from its reservation in the condemnation complaint of the right to have the validity of the claims determined by the Department of the Interior (R. 22). Thus, the court of appeals could not have found an election as a matter of choice but only by operation of law.

The decision, however, finds no support in 28 U.S.C. 1358 which confers original jurisdiction upon the district courts "of all proceedings to condemn real estate for the use of the United States * * *." Nothing in this section or its legislative history indicates that the jurisdiction, once invoked, is exclusive or that it requires the court to determine every issue. See *United States* v. *Eisenbeis*, 112 Fed. 190 (C.A. 9); *United States* v. *25,936 Acres*, 153 F. 2d 277 (C.A. 3); and cases cited at pp. 29-30, n. 11, *supra*. Thus in *Eisenbeis*, the Ninth Circuit itself stated (*id.* at 195):

> * * * it does not necessarily follow, by the commencement of [condemnation] proceedings in the national court; that the title to the land, if in dispute, must be tried therein, and cannot be tried, heard, and determined in any other court.[17]

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[17] Neither *United States* v. *10,245 Acres of Land*, 50 F. Supp. 470 (E.D. Wash.), nor *United States* v. *Bothwell Co.*, 7 F. 2d 624 (D. Wyo.), is to the contrary. Both decisions are consistent with the position of the government here that the district court retained discretion to permit proceedings for determination of the validity of a private claim to go forward before the Department of the Interior.

In *Bothwell Co.*, Bothwell's transferor had filed for a patent in 1903 and became legally entitled to its issuance in 1905 since no protest or contest had been filed. *Lane* v. *Hoglund*, 244 U.S. 174; *Payne* v. *Newton*, 255 U.S. 438. Condemnation proceedings were commenced May 10, 1909. On August 26, 1909, the General Land Office formally preferred charges that the entry by Bothwell's

Moreover, the decision of the court of appeals is contrary to the holding of this Court in *United States* v. *93,970 Acres, supra.* There, it was argued that the United States had waived its right to deny a claimant's interest in certain property by bringing an action to condemn the same interest. The Court rejected this contention, holding that the doctrine of election of remedies does not force the government to choose between abandoning its contention that the adverse claimant had no rights in the property and giving up its right to obtain immediate possession under condemnation law. The Court stated (360 U.S. at 332):

We see no reason either in justice or authority

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transferor was invalid. An administrative hearing was had and it was adjudged in 1911 that the entry should be cancelled. The district court held that the patent should have issued in 1905 and rejected the contention that it had no jurisdiction to try the issue of Bothwell's title. It held that in bringing the condemnation action the United States had conferred jurisdiction upon the court, that the subsequent administrative proceedings were void under *Lane* v. *Hoglund* and *Payne* v. *Newton* and that the court could recognize that Bothwell's transferor had had a legal right to issuance of the patent.

In *United States* v. *10,245 Acres of Land, supra*, the condemnation court tried the issue of the validity of an alleged homestead claim and found it invalid. Although this was the result sought by the government, the court did not consider the government's contention that the determination of invalidity should have been rested upon an administrative order cancelling the claim which was issued after proceedings before the Land Office. The cancellation proceedings had been initiated seven months after the declaration of taking had been filed in the condemnation action but were concluded prior to the court's decision. While we believe the court erred in not giving effect to the administrative decision, its action was not in conflict with that decision and in no sense stands for the proposition that the court lacked authority to permit the administrative agency to determine validity.

> why such a Hobson's choice should be imposed and why the Government should be forced to pay for property which it rightfully owns merely because it attempted to avoid delays which the applicable laws seek to prevent. Such a strict rule against combining different causes of action would certainly be out of harmony with modern legislation and rules designed to make trials as efficient, expeditious and inexpensive as fairness will permit.

The ruling of the court of appeals would impose upon the government a Hobson's choice similar in all material respects to that condemned in *93.970 Acres*. In both cases the government could have proceeded to determine the issue of title prior to bringing a condemnation action, but only at the expense of foregoing immediate possession. In both cases a condemnation action was appropriate because, if the issue of validity of title were determined against the government, the government would still wish to take the property involved, paying the just compensation determined in the condemnation proceeding. In *93.970 Acres* this Court declared that initiation of the condemnation action does not prevent the district court from resolving both the question of title and the amount of compensation required for the taking, if title is in the claimant. For the same reasons, the filing of an action for condemnation should not preclude the district court from allowing an administrative tribunal to determine the question of title while reserving de-

termination of the amount of compensation required for the taking if title is in the claimants.[18]

Rule 71A(h) of the Federal Rules of Civil Procedure does not preclude reference of the issue of validity of the mining claim to the Department of the Interior. The interpretation of the rule by the court of appeals as requiring the district court to decide all the issues in the condemnation suit would preclude reference of questions of state law to appropriate state tribunals. This reading of Rule 71A(h), which is in conflict with the decisions of many courts which have stayed condemnation actions to allow matters of state law to be tried in state courts,[19] is wholly unwarranted.

The twofold purpose of Rule 71A(h) was (1) to specify the conditions on which trial of the issue of just compensation was to be to the court, to a jury or to a commission and (2) to allocate between the court,

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[18] Under the court of appeals decision, the government would be forced to proceed by the undesirable physical-seizure approach where it required immediate possession but wished to avoid an election of forums. See *United States* v. *Dow*, 357 U.S. 17. Such a seizure under the powers of eminent domain and without benefit of judicial procedure would plainly leave no basis for a conclusion that the government had waived the jurisdiction of the Department of the Interior to adjudicate the validity of mining claims. As this Court has indicated in another connection, however, the substantive results should be the same whether the taking is by condemnation or physical seizure. *United States* v. *Dow*, *supra*. To the extent the court might validate a claim which would be invalidated in a proceeding before the expert administrative agency, the result would be contrary to the teaching of *Dow*. In any event, clearly no purpose would be served by forcing the government, in such cases, to abandon the orderly judicial procedure established by Congress, with its numerous protections for the condemnee, in favor of the seizure method, leaving the property-claimant to a suit under the Tucker Act for his sole remedy.

[19] See cases cited *supra*, pp. 29-30, n. 11.

on the one hand, and the jury or commission, on th other, the determination of relevant issues. It is to the latter problem that the last sentence of the subsection is addressed: "Trial of all issues shall otherwise be by the court." There was plainly no purpose of limiting the court's recourse to state tribunals or administrative agencies on questions appropriate for their determination. The obvious role of the quoted sentence is to foreclose any argument that there is a right to jury trial on issues other than just compensation. There is nothing in the history of the Rule, and we know of no reason as a matter of policy, that can be given for precluding the courts in appropriate cases of securing the assistance of more expert bodies—state courts or administrative agencies—to determine particular matters.

The rule adopted by the court of appeals would impose unprecedented limitations upon district courts in federal condemnation proceedings and would deprive them of aid in disposing of their business. It finds no parallel, so far as we are aware, in any other type of case coming before the federal courts. That the rule-makers had no such aim in mind is indicated by the fact that, except as to matters not pertinent here, the federal rules applicable to civil cases generally are declared applicable to federal condemnation proceedings.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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AUGUST 1962.

## APPENDIX

### Mining Claims Involved in Pending Litigation—Southern District of California

| | | |
|---|---|---|
| 3129-PH | 291 | Unpatented Claims |
| 769-60-Y | 129 | Not examined |
| (Mojave B Range) | 55 | Validated |
| | 105 | Unvalidated |
| | 2 | No decision |
| 311-ND | 598 | Unpatented Claims |
| 3472-ND | 161 | Validated |
| (Inyokern Naval Test Station) | 437 | Unvalidated |
| 14018-PH, et al. | 1,246 | Unpatented Claims |
| (29 Palms Marine Base) | 22 | Validated |
| | 1,113 | Unvalidated |
| | 111 | No decision |
| 14361-Y | 2 | Unvalidated |
| (Randsburg Wash Test Range) | 1 | No examination |
| 1782-SD | 55 | Unpatented Claims |
| 2426-SD | 5 | Validated |
| (Chocolate Mountain Aerial Gunnery Range) | 11 | Unvalidated |
| | 39 | No decision |
| 19963-WB | 66 | Unpatented Claims |
| (Cuddeback Lake Air Force Range) | 66 | Unvalidated |

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